

MONTANA LEGISLATIVE HISTORY

Chapter 1403 1895 Civil Code of MCA 1895 aka MGA 70.10.203

Bill H _____ S _____ Original bill & history ____c

H. Committee on _____

S. Committee on _____

Hearing Date(s) _____ c

Hearing Date(s) _____ c

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Date Out _____ c

Did this bill originate in an interim committee? ____Yes ____No

Committee _____

Report _____

This history contains amended text
reference note

Field Code Civil §445

Civil Code § 1016

THE
CODES AND STATUTES OF MONTANA.

IN FORCE JULY 1st, 1895.

INCLUDING THE
POLITICAL CODE, CIVIL CODE, CODE OF CIVIL PRO-
CEDURE AND PENAL CODE.

REPORTED BY
D. S. WADE, F. W. COLE AND B. P. CARPENTER,
CODE COMMISSIONER.

AS AMENDED AND ADOPTED BY THE FOURTH LEGISLATIVE ASSEMBLY,
TOGETHER WITH OTHER LAWS CONTINUED IN FORCE.

COMPILED BY D. S. WADE, COMMISSIONER.

VOL. I.
CONSTITUTIONS.
I. POLITICAL CODE.
II. CIVIL CODE.

ANNOTATED
BY
EDWIN S. BOOTH.

BUTTE, MONTANA:
INTER MOUNTAIN PUBLISHING CO., PRINTERS,
1895.

comes your own by law of nations; and that is said to be alluvion which is added so gradually that no one can judge how much is added in each moment of time: Cooper's Justinian, lib. 2, tit. 1; 3 Barn. & Cress. 91. Inperceptible: Halsey v. McCormack, 18 N. Y. 147; Emans v. Turnbull, 2 Johns. 313. If the formation is sudden, held in New York that

it belonged to the state: Id. Accumulation of material: Emans v. Turnbull, 2 Johns. 313.

ACCRETION. — A deed conveying land, formerly fronting on a river, by its section number passes title to land added thereto by accretion: Tappendorf v. Downing, 76 Cal. 169.

§ 1402. If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

§ 1403. Islands and accumulations of land, formed in the beds of streams which are navigable, belong to the state, if there is no title or prescription to the contrary.

ISLANDS.—See ante, sec. 1078, and note.

§ 1404. An island, or accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed; or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

§ 1405. If a stream navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

§ 1406. A tenant may remove from the demised premises any time during the continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament, or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

FIXTURES.—See the note to sec. 1076, ante.

CHAPTER II.

ACCESSION TO PERSONAL PROPERTY.

Section 1410. *Accession by uniting several things.*

“ 1411. *Principal part, what.*

“ 1412. *Same.*

“ 1413. *Uniting materials and workmanship.*

“ 1414. *Inseparable materials.*

“ 1415. *Materials of several owners.*

“ 1416. *Willful trespassers.*

“ 1417. *Owner may elect between the thing and its value.*

“ 1418. *Wrongdoer liable in damages.*

quits the premises at the end of the term, without any special agreement with his landlord, the right to remove is lost: *Merritt v. Judd*, 14 Cal. 59; *Dostal v. McCadden*, 35 Iowa, 318; *Loughran v. Ross*, 45 N. Y. 792; *Bainway v. Cobb*, 99 Mass. 459; *Cromie v. Hoover*, 40 Ind. 49. A new contract or lease without a reservation in favor of the tenant of the fixtures erected is considered a surrender of the premises and forfeiture of the right of removal: *Merritt v. Judd*, 14 Cal. 59. This principle was extended, in *Marks v. Ryan*, 63 Id. 107, to the case of a building erected by the lessee on the leased premises, and which was there held to pass to the lessor by a renewal of the lease without any reservation therein by the lessee of his right to the structure. See the subject of fixtures as between landlord and tenant discussed in *Holmes v. Tremper*, 14 Am. Dec. 241.

A tenant, by giving a name to a hotel as a sign of the business, does not thereby make the name a fixture of the building and the property of the landlord upon the expiration of the lease: *Woodward v. Lazar*, 21 Cal. 448.

NATURE OF ANNEXATION.—The strictness of the earlier rule, requiring a structure to be attached to the soil in order to become a fixture, is now relaxed: *Hawes v. Lathrop*, 38 Cal. 493. An addition to a house is a fixture: *Id.* And

see *Gray v. Holdship*, 17 Am. Dec. 686. A building set upon blocks resting on the ground is personal property, and replevin lies to recover it: *Pennybecker v. McDougal*, 48 Cal. 160. Likewise is a portable fence made of posts and boards, and resting on the surface of the ground: *Id.* An engine fastened by bolts to a timber, itself notched into sills which were embedded in the soil, is a fixture: *McKiernan v. Hesse*, 51 Id. 594.

An engine, boiler, and machinery for a flouring mill, erected by a lessee on the demised premises, and securely attached thereto by bolts and screws, are fixtures, as between him and his attaching creditors, notwithstanding an agreement between the lessor and lessee that the latter should be at liberty to remove the machinery upon the expiration of the lease: *McNally v. Connolly*, 70 Cal. 3. The severance and removal of the fixtures by the lessee converts them into personalty: *Id.* No demand is necessary before bringing suit to recover the possession of the fixtures after their wrongful severance and removal by the lessee: *Id.*

FIXTURES, WHAT ARE.—80 Cal. 245.

WRONGFUL REMOVAL, REMEDY FOR.—80 Cal. 245.

DEED OF FIXTURES, effect of: 95 Cal. 92.

§ 1077. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills, and all other machinery or tools used in working or developing a mine, are to be deemed affixed to the mine.

§ 1078. A thing is deemed to be incidental or appurtenant to land when it is by right used with the land for its benefit, as in the case of a way, or water course, or of a passage for light, air, or heat from or across the land of another.

APPURTENANCES.—It is the nature and use of the thing annexed which makes it appurtenant or not, as the case may be: *Farmer v. Ukiah Water Co.*, 56 Cal. 11, where a right to use water for the benefit of granted premises was held to pass as an appurtenant. The right to have water flow in a ditch is appurtenant thereto: *Lower K. R. D. Co. v. Kings R. & F. C. Co.*, 60 Id. 408. Water flowing over one's land is part and parcel of it, not appurtenant to it: *St. Helena W. Co. v. Forbes*, 62 Id. 182. A wharf and chute erected by a stranger to the title are not "incidental or appurtenant" to the land on part of which the wharf stands: *Coburn v. Ames*, 52 Id. 385. That appurtenants may be of a corporeal as well as incorporeal nature, see *Farmer v. Ukiah Water Co.*, 56 Cal. 11, 14.

Land cannot pass as appurtenant to land: *Armstrong v. Dubois*, 90 N. Y. 95; *St. Louis Bridge Co. v. Curtis*, 103 Ill. 410.

EASEMENTS AND SERVITUDES.—See secs. 1250 et seq., post.

WHAT PASSES AS APPURTENANT.—See the note to *Strickler v. Todd*, 13 Am. Dec. 657.

APPURTENANCES.—The defendant and the plaintiff's assignor, a mining

company, entered into a contract by which the former agreed to furnish water to the latter for the purpose of working a quartz mill and mine, through a ditch to be constructed by the mining company. The latter was to be repaid the expense of building the ditch in water, and in case it abandoned the working of the mill and mine before the payment was complete, then it was to be paid out of the net proceeds of water run through and sold from the ditch. The company completed the ditch, and delivered it to the defendant, but before it was repaid the expense of building, abandoned its mining operations. It was held that the ditch and water supply were not appurtenant to the mill or mine, and that the rights of the mining company under the contract might be assigned independently of the mill and mining property: *Ginocchio v. Amador C. & M. Co.*, 67 Cal. 493; 80 Cal. 310; 73 Cal. 550; 65 Cal. 46; 93 Cal. 365; 79 Cal. 587; springs appurtenant to unsurveyed public land: 91 Cal. 187. A water right acquired and used for a beneficial and necessary purpose in connection with realty, is an appurtenance thereto, and as such passes with the land unless expressly reserved: *Sweetland v. Oleson*, 11 Mont. 27.

A water ditch cannot be appurtenant to another water ditch, and passes as an incident thereto under a grant of the same: *Donnell v. Humphreys*, 1 Mont. 518.

The grant of a water ditch, by general words, includes the excavated channel, the right to the water by which it is supplied and made valuable, and another ditch which conveys water to it: *Id.*

Where a patent issued on a confirmed Mexican grant describes the land con-

veyed as bounded by a river navigable in fact, the title of the patentee extends no farther than the edge of the stream, and does not include an island situated in the river, opposite the mainland, notwithstanding the portion of the river between the island and the mainland is not navigable: *Packer v. Bird*, 71 Cal. 134.

CONSTRUCTION OF WORDS "BY RIGHT," as used in this section: 93 Cal. 365.

§ 1079. Every kind of property that is not real is personal.

PERSONAL PROPERTY.—Pol. Code, sec. 3680.

GROWING CROPS are of a peculiar character. They are not goods or chattels within the meaning of the statute of frauds requiring manual delivery, as they are not susceptible thereof: *Bours v. Webster*, 6 Cal. 661; *Bernal v. Hovious*, 17 Id. 541; *Davis v. McFarlane*, 37 Id. 634. Nor do they come within the provisions of that statute relative to sales of interest in real estate: *Marshall v. Ferguson*, 23 Id. 65. Where one of two parties living on a ranch sells to the other a half interest in a growing crop, and they continue so to live, the vendee working as hired man for the vendor, such sale is not void against creditors: *Visher v. Webster*, 13 Id. 58; *Bernal v. Hovious*, 17 Id. 541. Where the owner of a growing crop permits his creditors to enter and harvest the same under an agreement to take the amount of the debt from the proceeds, and pay over

the remainder, such creditor takes precedence of a subsequent mortgagee with notice: *Lovenson v. Ward*, 45 Id. 8. Where one enters and plants a crop under a parol agreement to divide the proceeds with the owner of the land, but mortgages the crop to a stranger, this latter takes but the interest of his mortgagee, and is bound by the agreement: *Sunol v. Molloy*, 63 Id. 369.

While it is held that the plaintiff is entitled to the crop growing on land and sown by the defendants prior to the commencement of the action for the possession of the land, *Corcoran v. Doll*, 35 Cal. 476, in *Page v. Fowler*, 39 Id. 412, it was determined that the plaintiff, although entitled to recover the rents and profits of the land, could not recover the crops actually harvested.

Who entitled to crops on an execution sale of the land: See the note to *Crews v. Pendleton*, 19 Am. Dec. 752.

TITLE II.

OWNERSHIP.

CHAPTER I. OWNERS.

II. MODIFICATIONS OF OWNERSHIP.

III. RIGHT OF OWNERS.

IV. TERMINATION OF OWNERSHIP.

CHAPTER I.

OWNERS.

Section 1090. Owner.

" 1091. *Property of the state.*

§ 1090. All property has an owner, whether that owner is the state, and the property public; or the owner an individual, and the property private. The state may also hold property as a private proprietor.

PROPERTY OF THE STATE.—See Pol. Code, secs. 60, 63.

The bed of a river is within the control of the state, subject only to the rights of commerce.

PUBLIC LANDS.—See Pol. Code, secs. 3470 et seq.

ESCHEAT.—See post, sec. 1868.

WATER AS A BOUNDARY.—See note to sec. 1291.

§ 1091. The state is the owner of all land below the water of a navigable lake or stream; of all property lawfully appropriated by it

THE
CIVIL CODE

OF THE

STATE OF CALIFORNIA,

AS ENACTED IN 1872, AMENDED AT SUBSEQUENT SESSIONS, AND ADAPTED TO THE CONSTITUTION OF 1879; AND AN APPENDIX OF GENERAL LAWS UPON THE SUBJECTS EM-
BRACED IN THE CODE.

COMPILED BY

JAMES H. DEERING.

SAN FRANCISCO:
BANCROFT-WHITNEY COMPANY.

1897.

TITLE III.

ACCESSION.

Chapter I. To Real Property, §§ 1013-1019.

II. To Personal Property, §§ 1025-1033.

CHAPTER I.

ACCESSION TO REAL PROPERTY.

- § 1013. Fixtures.
- § 1014. Alluvion.
- § 1015. Sudden removal of bank.
- § 1016. Islands, in navigable streams.
- § 1017. In unnavigable streams.
- § 1018. Islands formed by division of stream.
- § 1019. What fixtures tenant may remove.

§ 1013. When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in section ten hundred and nineteen, belongs to the owner of the land, unless he chooses to require the former to remove it. [Amendment approved March 30, 1874; Amendments 1873-4, p. 224. In effect July 1, 1874.]

Fixtures: See ante, sec. 668.

§ 1014. Where, from natural causes, land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the rescission of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank.

§ 1015. If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another

part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof.

§ 1016. Islands and accumulations of land, formed in the beds of streams which are navigable, belong to the State, if there is no title or prescription to the contrary.

§ 1017. An island, or an accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed; or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

§ 1018. If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

§ 1019. A tenant may remove from the demised premises any time during the continuance of his term, anything affixed thereto for purposes of trade, manufacture, ornament, or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises. [New section approved March 30, 1874; Amendments 1873-4, p. 224. In effect July 1, 1874.]

Civ. Code.—23.

THE
CIVIL CODE

OF THE

STATE OF NEW YORK

REPORTED COMPLETE

BY THE

COMMISSIONERS OF THE CODE.

ALBANY:
WEED, PARSONS & CO., PRINTERS.
1865.

accumulation of material,² or by the recession of the stream,³ such land belongs to the owner of the bank, subject to any existing right of way over the bank.

¹ *Halsey v. McCormick*, 18 N. Y., 147; *Emans v. Turnbull*, 2 Johns., 313. If the formation is sudden, it belongs to the state (*Id.*).

² *Emans v. Turnbull*, 2 Johns., 313.

³ *Code Napoleon*, Art. 556, 557.

§ 444. If a river or stream, navigable or not navigable, carries away, by sudden violence, a considerable and distinguishable part of a bank, and bears it to the opposite bank, or to another part of the same bank, the owner of the part carried away may reclaim it, within a year after the owner of the land to which it has been united takes possession thereof.

Sudden removal of bank.

This and the four sections following are similar to those of the *Code Napoleon*, Art. 559-563.

§ 445. Islands, and accumulations of land, formed in the beds of streams which are navigable, belong to the state, if there is no title or prescription to the contrary.

Islands in navigable streams.

§ 446. An island, or an accumulation of land, formed in a stream which is not navigable, belongs to the owner of the shore on that side where the island or accumulation is formed, or, if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river.

Islands in streams not navigable.

§ 447. If a stream, navigable or not navigable, in forming itself a new arm, divides itself and surrounds land belonging to the owner of the shore, and thereby forms an island, the island belongs to such owner.

Islands formed by division of streams.

§ 448. If a stream, navigable or not navigable, forms a new course, abandoning its ancient bed, the

Abandoned bed of stream.